IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 885 of 2000

Reserved on: 2nd November, 2006.

Date of decision: 6th November, 2006

Bhuri Singh .....Petitioner

versus

Financial Commissioner and others ..... Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, J.

Whether approved for reporting ?[1]

For the Petitioner : Mr Tara Singh Chauhan, Advocate.

For respondents 1 to 4: Mr A Burathoki, Additional Advocate General.
For respondents No.5 to 10 & LRs 11(a) to 11 (c) : Mr Suneet Goel,Advocate.

Deepak Gupta,J.

Petitioner Bhuri Singh claims that his grand father Gajan Singh had gifted some land in his favour vide Gift Deed dated 15th November, 1961. The petitioner at the relevant time was a minor. After the death of Gajan Singh his property was mutated in favour of his widow, sons and

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

daughters on 10th February, 1969. One Litru was recorded as tenant over the suit land. Therefore, Bhuri Singh filed a suit for declaration that he was owner in possession of the suit land, on the basis of the gift deed. Litru contested the suit on the ground that the gift deed dated 15th November, 1961 had been executed by Gajan Singh in favour of Bhuri Singh to defeat his claim to acquire proprietary rights under the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. The trial court dismissed the suit on 31st January, 1981.

Aggrieved by the decision in the suit, Bhuri Singh filed an appeal, being Civil Appeal No.172 of 1981, which was allowed by the learned Additional District Judge, Mandi & Shimla Divisions, Camp at Bilaspur (HP), vide its judgment dated 12th August, 1981, and the appellant Bhuri Singh was declared to be owner of the suit land on the basis of the gift deed dated 15th November, 1961 and mutation sanctioned in favour of legal heirs of Gajan Singh was held to be illegal, null and void. Litru was held to be non-occupancy tenant of the suit land under the appellant Bhuri Singh.

Litru filed an appeal, challenging the judgment and decree of the learned first Appellate Court dated 12th August, 1981 before this Court, being RSA No. 151 of 1981. This appeal was dismissed on 15th May, 1991. This Court, while upholding judgments of the courts below, held that rights of Litru to acquire proprietorship of the suit land will be determined in accordance with the Land laws i.e. either under the provisions of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 or under the Himachal Pradesh Tenancy and land Reforms Act, 1972.

Thereafter, Bhuri Singh filed an application for resumption of land, under sub Rule (1) of Rule 21 of the H P Tenancy and Land Reforms Act, on the ground that he is a landless person and has no means of livelihood. This application was contested by Litru on various grounds, including the ground that the same was time barred. The Land Reforms Officer came to the conclusion that the application has not been filed within one month of the coming into force of the Rules and, therefore, the same is time barred. Bhuri Singh challenged this order in the hierarchy of Revenue Officers up to the level of the Financial Commissioner and all

the officers held that the application for resumption was time barred. Hence, the present writ petition.

Mr. Chauhan, learned counsel for the petitioner Bhuri Singh contends that he was never entered as owner of the suit land and his right to file resumption application accrued to him only after the judgment of this Court on 15th May, 1991 and thereafter he had got the mutation attested and the application was filed within a short period. Learned counsel also submits that this Court in RSA No.151 of 1981 had stayed the judgment of the first Appellate Court and, therefore, Bhuri Singh was unable to take benefit of the judgment of the learned first Appellate Court whereby he was declared to be owner of the suit land.

There is no dispute with regard to the fact that the learned first Appellate Court vide its judgment dated 12th August, 1981 held appellant-plaintiff to be the owner of the suit land, on the basis of the Gift Deed dated 15th November, 1961. On the said date the petitioner acquired a legal right to get the land mutated in his favour and to move an application for resumption of the land. Even assuming that the

petitioner could not have moved such an application prior to 12th August, 1981 since he was not shown to be owner of the suit land in the revenue record, there is no explanation as to why such an application was not moved immediately after 12th August, 1981.

Mr Chauhan, learned counsel has contended that Litru had obtained a stay order from this Court in RSA No.151 of 1981. To verify this fact, I had summoned the records of RSA No.151 of 1981. The contention of Mr Chauhan, learned counsel is found to be totally incorrect and false. No doubt, Litru along with the appeal filed an application, under Order 41 Rule 5 of the Code of Civil Procedure for stay of the judgment and decree of the learned first Appellate Court and the same was disposed of on 22nd September, 1981. The order dated 22nd September, 1981 reads thus:

> "22.9.81:Present:Mr K S Patyal, Counsel for the appellant.
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> Admit. Notice.
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> **CMP 1549/81.**
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> Heard. The decree in appeal is only a declaratory decree and there is no question of invoking the provisions of Order 41 Rule 5 C.P.C. In these

circumstances, this application is dismissed without prejudice to the appellant's right to file any other application, if otherwise legally permitted under law.

sd/
Judge"

Thereafter, Litru moved another application being CMP No.1703 of 1981, praying that respondents be restrained from interfering in his possession. This application was also dismissed on 28th September, 1981. The order reads as under:

"28.9.81 Present: Sh.K S Patyal, counsel for the appellant.

CMP 1703/81.

This application under Order 39 Rules 1 and 2, red with Section 151 C.P.C. has been filed by the appellant praying that the respondents be restrained from interfering in the possession of the appellant over the suit land. The learned counsel for the appellant has stated that the appellate court has held that the appellant is in possession of the disputed land as a tenant. The learned counsel contends that his possession be safe-guarded because the respondents are trying to interfere in his possession on the

> basis of the judgment of the appellate court. Such a prayer cannot be allowed because the first appellate court has already held the appellant to be in possession of the suit land as a tenant and the position of the respondents is only that of the landlords. In these circumstances this application is dismissed.
>
> Sd/-
> Judge."

Thus, it is clear that there was no stay order, operating in favour of Litru, during the pendency of the RSA. The averment made in this behalf in the writ petition is patently false and has been made with a view to mislead this court. The petitioner is guilty of making false averment in the petition that the stay was operating during the pendency of the RSA No. 151 of 1981 and, therefore, the petitioner could not file the application for resumption.

Keeping in view the aforesaid facts, the writ petition is dismissed. Since a patently false plea has been raised by the petitioner, he is burdened with costs of Rs.3,000/- which shall

be paid to respondents 5 to 10, the legal heirs of Litru.

November 6, 2006 (Deepak Gupta),J.
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